

## § 20.610

## 38 CFR Ch. I (7–1–05 Edition)

attorney-at-law's fees will be determined on the basis of the total amount of the past-due benefits even though a portion of those benefits may have been apportioned to the claimant's or appellant's dependents.

(iii) If an award is made as the result of favorable action with respect to several issues, the past-due benefits will be calculated only on the basis of that portion of the award which results from action taken on issues concerning which the criteria in paragraph (c) of this section have been met.

(4) In addition to filing a copy of the fee agreement with the Board of Veterans' Appeals as required by paragraph (g) of this section, the attorney-at-law must notify the agency of original jurisdiction within 30 days of the date of execution of the agreement of the existence of an agreement providing for the direct payment of fees out of any benefits subsequently determined to be past due and provide that agency with a copy of the fee agreement.

(i) *Motion for review of fee agreement.* The Board of Veterans' Appeals may review a fee agreement between a claimant or appellant and an attorney-at-law or agent upon its own motion or upon the motion of any party to the agreement and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable in light of the standards set forth in paragraph (e) of this section. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable Department of Veterans Affairs file number. Such motions must set forth the reason, or reasons, why the fee called for in the agreement is excessive or unreasonable; must be accompanied by all evidence the moving party desires to submit; and must include a signed statement certifying that a copy of the motion and any evidence was sent by first-class mail, postage prepaid, to each other party to the agreement, setting forth the address to which each such copy was mailed. Such motions (other than motions by the Board) must be filed at the following address: Office of the Senior Deputy Vice Chairman (012), Board of

Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. The other parties may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion and must include a signed statement certifying that a copy of the response and any evidence was sent by first-class mail, postage prepaid, to each other party to the agreement, setting forth the address to which each such copy was mailed. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion. If a reduction in the fee is ordered, the attorney or agent must credit the account of the claimant or appellant with the amount of the reduction and refund any excess payment on account to the claimant or appellant not later than the expiration of the time within which the ruling may be appealed to the United States Court of Appeals for Veterans Claims.

(j) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under §14.633 of this chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 5902, 5904, 5905)

(Approved by the Office of Management and Budget under control number 2900-0085)

[57 FR 4109, Feb. 3, 1992, as amended at 57 FR 38443, Aug. 25, 1992; 59 FR 25330, May 16, 1994; 64 FR 2138, Jan. 13, 1999; 65 FR 14472, Mar. 17, 2000; 67 FR 36104, May 23, 2002; 67 FR 49600, July 31, 2002]

### **§ 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.**

(a) *Applicability of rule.* The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of

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Veterans Affairs field personnel or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *General.* Any representative may be reimbursed for expenses incurred on behalf of a veteran or a veteran's dependents or survivors in the prosecution of a claim for benefits pending before the Department of Veterans Affairs. Whether such a representative will be reimbursed for expenses and the method of such reimbursement is a matter to be determined by the representative and the claimant or appellant. Expenses are not payable directly to the representative by the Department of Veterans Affairs out of benefits determined to be due to a claimant or appellant. Unless required in conjunction with a motion for the review of expenses filed in accordance with paragraph (d) of this section, agreements for the reimbursement of expenses need not be filed with the Department of Veterans Affairs or the Board of Veterans' Appeals.

(c) *Nature of expenses subject to reimbursement.* "Expenses" include non-recurring expenses incurred directly in the prosecution of a claim for benefits upon behalf of a claimant or appellant. Examples of such expenses include expenses for travel specifically to attend a hearing with respect to a particular claim, the cost of copies of medical records or other documents obtained from an outside source, the cost of obtaining the services of an expert witness or an expert opinion, etc. "Expenses" do not include normal overhead costs of the representative such as office rent, utilities, the cost of obtaining or operating office equipment or a legal library, salaries of the representative and his or her support staff, the cost of office supplies, etc.

(d) *Expense charges permitted; motion for review of expenses.* Reimbursement for the expenses of a representative may be obtained only if the expenses are reasonable. The Board of Veterans' Appeals may review expenses charged by a representative upon the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. Such motions must be in writing and must include

the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable Department of Veterans Affairs file number. Such motions must specifically identify which expenses charged are unreasonable; must set forth the reason, or reasons, why such expenses are excessive or unreasonable; must be accompanied by all evidence the claimant or appellant desires to submit; and must include a signed statement certifying that a copy of the motion and any evidence was sent by first-class mail, postage prepaid, to the representative. Such motions must be filed at the following address: Office of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. The representative may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion and must include a signed statement certifying that a copy of the response and any evidence was sent by first-class mail, postage prepaid, to the claimant or appellant, setting forth the address to which the copy was mailed. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, whether travel expenses are in keeping with expenses normally incurred by other representatives, etc. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion.

(e) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under §14.633 of this chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 5904)

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